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No. 3046

In the Supreme Court of the United States

October Term, 1945

J. E. MacDONNELL

Passaic Insurance Director, appellant

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vs.

[illegible]

Petitioner in Propria Persona.

Appeal from [illegible]

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No. 306

In the Supreme Court of the United States

OCTOBER TERM, 1945

J. R. MASON, PETITIONER

v.

PARADISE IRRIGATION DISTRICT, RESPONDENT

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

This proceeding is ruled by the provisions in 11 U.S.C.A., §§ 401-403. The opinion of the Court below is reported in 149 F. (2d) 334. (R. 215.)

This opinion is in conflict with the opinion by the Fifth Circuit Court of Appeals on the same matter and has departed from the accepted rules of fairness applicable to bankruptcy cases.

The Circuit Court of Appeals for the Ninth Circuit erred in denying petitioner the privilege of receiving the same refunding 4% bonds, with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept $525.21 in cash for each $1000 par value 6% gold bond.

The judgment of the Circuit Court was entered May 11, 1945. (R. 215.) The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code. (28 U.S.C., Sec. 347(a).)

Petitioner is the owner of $29,000 par value General Obligation 6% Gold Bonds, dated May 1, 1917 and July 1, 1920, shown in claim. (R. 161.)

The sole consenting creditor is the R.F.C. (R. 12), whose claim rests on bonds which, at the time its consent was given to this proceeding, were "held by it as security for the funds furnished by it" (R. 49) under the provisions of a loan made and disbursed by the R.F.C. in 1934. (R. 87.)

Petitioner offered an adjustment which was accepted by respondent (R. 175), but which was disapproved by the R.F.C. (R. 178-b) and which the District Court permitted respondent to be exonerated from because the R.F.C. warned that it would "withdraw its consent" (R. 178-e) unless the stipulation agreed to was set aside.

Petitioner also offered to accept refunding 4% bonds (R. 181), but this offer was denied by the District Court. (R. 184.) Petitioner appealed, and on appeal the Circuit Court affirmed. (R. 215.)

Certiorari was granted by this Court "limited to the question whether any applicable rule requiring equality of treatment among creditors was violated by the difference between the treatment accorded the peti-

tioner and that accorded the R.F.C. under the approved plan".

ARGUMENT.

Respondent correctly argues that the question here involved has been often raised and decided adversely by the Ninth Circuit Court of Appeals. But the ruling on the same matter by the Fifth Circuit in *State of Texas v. Tabasco Ind. Cons. School Dist.*, 132 F. (2d) 62, 133 F. (2d) 196, 142 F. (2d) 58, conflicts with the Ninth Circuit rulings, for the reasons shown in the petition.

Although petitioner does not question the right of the R.F.C. to "consent" to the instant proceeding, the R.F.C. at the time its consent was given was not in the same relationship with the respondent as petitioner against whom the R.F.C. vote was counted.

The consent of the R.F.C. did not represent any concession or yielding equivalent to that demanded from petitioner and compelled by the plan to accept. This practice was again denounced by the Fifth Circuit Court in *Wright v. Coral Gables*, 137 F. (2d) 192, which ruling was sustained by this Court on March 3, 1944. In that case, the Circuit Court said,

> "Consent was given by R.F.C. to bludgeon into submission those with whom the city had not been able to make settlements satisfactory to itself."

On August 19, 1937, the R.F.C. wrote respondent as follows (R. 153):

> "Our records indicate that $29,000 of old bonds * * * remain outstanding * * *"

The Fifth Circuit Court has also held that original bonds are "extinguished" when acquired by the R.F.C. in making a loan to districts under the same authority as the loan to respondent.

McLain v. Comm., 110 F. (2d) 878, affirmed 311 U.S. 527;

Texas Agr. Assn. v. Hidalgo W. C. & Imp. Dist. No. 1, 125 F. (2d) 829.

This Court said in *Clarke v. Rogers*, 228 U.S. 533:

> It is a fundamental principle of bankruptcy that "equality between creditors is necessarily the ultimate aim of the bankruptcy law, and to obtain it we must regard the essential nature of transactions, not their forms."

Other petitions under Chapter IX which were disapproved on the ground that they failed to meet the test of equality between creditors, are reported in *Block v. Palm Beach* (Fla.), 112 F. (2d) 949; *Belleair (Fla.) v. Groves*, 132 F. (2d) 542.

The rule governing the rights of holders of pledged bonds is reviewed at length by the learned judge of the United States District Court for Arkansas in *1st Nat. Bank v. St. Imp. Dist. No. 326*, 48 F. Supp. 225.

That no majority can deprive a minority bondholder of his rights in bonds issued under the same law as the bonds at bar, was settled by the California Court in *Selby v. Oakdale I. D.*, 140 Cal. App. 171, at page 176, where that Court said:

> "As to the right of the parties to prosecute this action we agree with counsel that Sec. 113 (Stat. 1933, p. 800), added to the California Irr. Dist. Act by an Act of the legislature approved May 9, 1933, is ineffective for any purpose. Its unconstitutionality is so apparent that citation of authority seems needless * * * It is evident that the legislature has no power to limit the right of any one of whose property interests have been invaded to seek redress through the courts unless joined by others owning like property."

Similar statutes impairing minority rights were denounced in *County of Los Angeles v. Rockhold*, 3 Cal. (2d) 192; *State v. Village of Brooklyn (Ohio)*, 49 N.E. (2d) 684; *Morgan County v. Governor of Kentucky*, 156 S.W. (2d) 498.

Here, the relationship between the consenting creditor, (R.F.C.) and the State agency is ruled, not by the original 6% bonds, but by the provisions in a contract executed in 1934 (R. 141) which contract is not subject to change if this proceeding is dismissed. The consent filed by the R.F.C. to this proceeding is solely for the purpose of improving their loan, and does not in any way represent a concession or yielding from the contract relationship existing between R.F.C. and

respondent, when the so-called consent was given in 1937. (R. 12.) The resolution of respondent (R. 148) shows that only "$29,000 of original bond issues are outstanding and unrefinanced" on August 30, 1937. It was not until November 4, 1937, that this proceeding commenced. (R. 5.) Therefore petitioner as the holder of original 6% bonds occupied a different position than R.F.C. which had firmly obligated itself in 1934 to take refunding 4% bonds at 100 and interest equal to the amount it had disbursed, and which was long before the passage of 11 U.S.C.A. 401-403.

It is only necessary, however, to show that petitioner and the R.F.C. are creditors of equal standing. This is clear.

The contract relation between R.F.C. and respondent, when this proceeding commenced, appears very similar to the relationship between the consenting creditors and the debtor in the case of *Amer. Un. Mut. Life Ins. Co. v. City of Avon Park,* 309 U.S. 651, where this Court said:

> "Compositions under Ch. IX, like compositions under the old § 12, 11 U.S.C.A. § 30, envisaged equality of treatment of creditors. Under that section and its antecedents, a composition would not be confirmed where one creditor was obtaining some special favor or inducement not accorded to others * * * That rule of composition is but part of the general rule of 'equality between creditors' (Clarke v. Rogers, 228 U.S. 534, 548) applicable in all bankruptcy proceedings. That prin-

ciple has been imbedded by Congress in Ch. IX by the express provision against unfair discrimination. That principle, as applied to this case necessitates a reversal."

Petitioner's contention is that the facts in the instant case are like those in the *Tabasco* case, supra. In that case (133 F. (2d) 196), after rehearing, the Court said:

"Reconstruction Finance Corporation appears in the record as the outright owner by purchase prior to June, 1940, of 92% of the bonds of Tabasco Cons. Ind. School District, and as such owner accepted the offer of composition. The State of Texas owns the remaining bonds and refused acceptance. The decree finds that all bondholders are of one class, and is based on the acceptance of R.F.C. It also finds that the plan it approves does not discriminate unfairly in favor of any creditor, but we think it clearly does. The State is to get 65% of the face of its bonds (as bonds not purchased by R.F.C.) in cash. R.F.C. is to get 'the money expended by it for the purchase of old bonds of petitioner as herein provided with interest on all disbursements for such purposes at 4% per annum from date thereof'. It is not to deposit its bonds with the disbursing agent, but is to be paid with the new 4% bonds to be issued. It is plainly getting new 4% bonds for its investment, with interest added, in exchange for the old bonds it owns, bought at 65 over three years ago. The State is to get 65, without interest, and in cash, though it considers new 4% bonds more desirable.

R.F.C. is not an outside lender of money, or purchaser of new bonds, but is the majority bondholder, controlling the fate of this composition. It is entitled to nothing more than or different from what the minority receives. The argument that it will not make a loan unless for the entire bond issue, because it will refuse to be a co-creditor, does not carry weight. It is a co-creditor now. Rehearing denied."

In the instant case the R.F.C. claims to be the holder of all but the $29,000 original 6% bonds. Petitioner is the owner and holder of those twenty-nine bonds. The decree finds that the R.F.C. holds the other original 6% bonds "as security for the funds furnished by it" (R. 49) and the District Court also finds "all of the creditors of petitioner District effected by said plan of composition constitute but one class". (R. 37.) It also finds that the "plan of composition as offered by the petitioner herein is fair, equitable and for the best interest of its creditors, and does not discriminate unfairly in favor of any creditor or class of creditors". (R. 46.)

Petitioner is ordered to accept in cash $525.21 for each $1000 par value 6% gold bond, with only a fraction of many years' defaulted interest.

The R.F.C. is to get not cash, but long term refunding bonds, with 4% interest on all funds invested by the R.F.C., and also get 4% interest to maturity of the new long term bonds. The discrimination is clear.

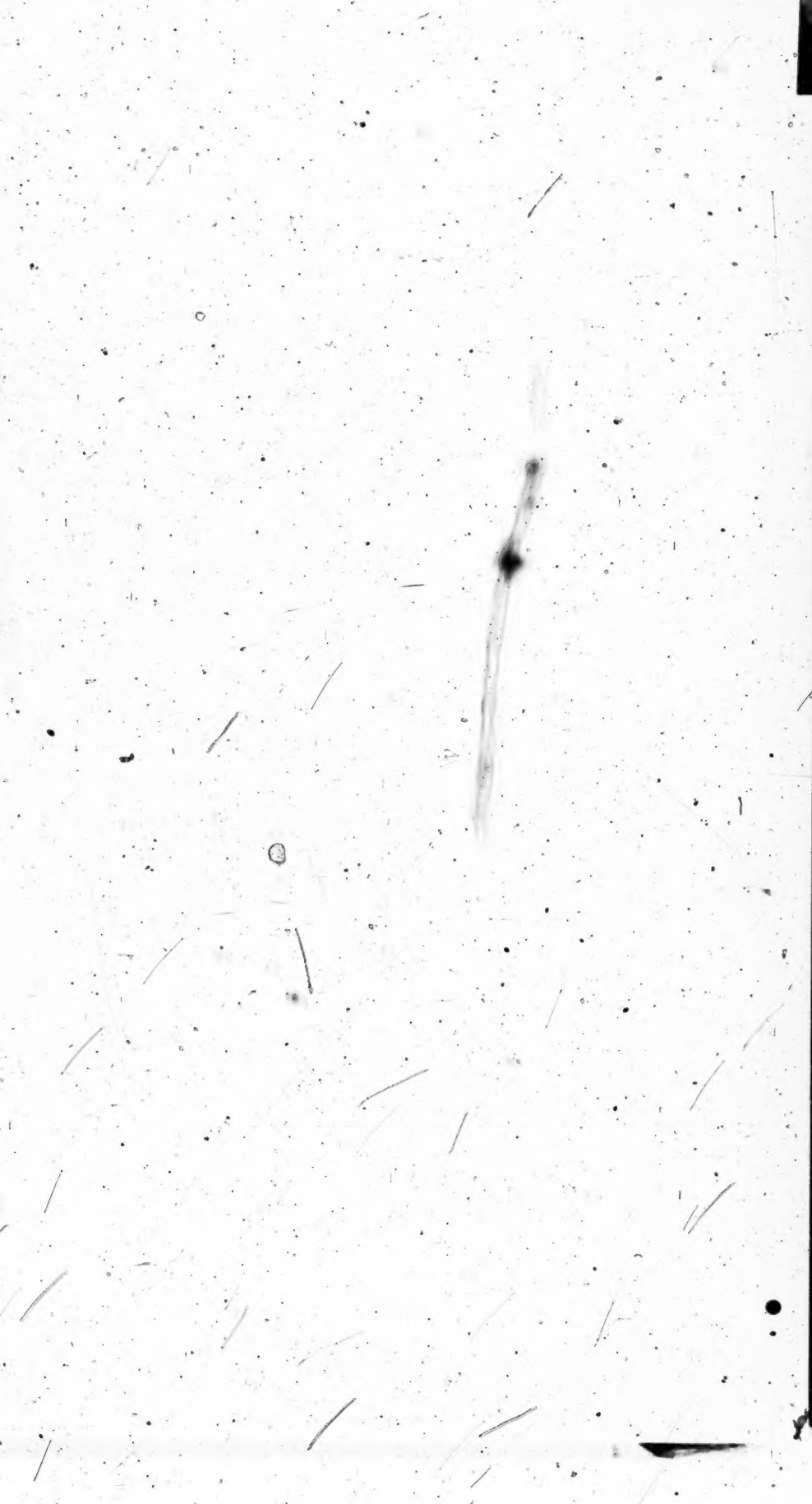
Wherefore, petitioner respectfully prays that the decree below be reversed, and the proceedings directed to be dismissed, and that petitioner have such other relief in the premises as to this Honorable Court may seem meet and just.

Dated, San Francisco, California,
October 29, 1945.

J. R. MASON,
Petitioner in Propria Persona.

Because of the limitation in the order of this Court, the second question presented in the instant petition is not discussed in this brief. But, due to its fundamental importance, it is briefly discussed in the appendix, should this Court be willing to read what is therein respectfully discussed.

(Appendix Follows.)



The second question presented in the instant petition, and which is not discussed in the supplemental brief, may be rephrased as follows:

(1) May Congress constitutionally interfere with the execution of a valid State land-tax statute (Stat. 1897, p. 254), when such action invades vested property rights of a third party secured by the Federal Constitution?

(2) Does the decree of the District Court, as construed and applied, have the force and effect of arresting the execution of the State land-tax statute forming the base of the rights and obligations of petitioner and respondent, and is it not inconsistent with the inhibitions in 11 U.S.C.A. § 104, sub. a(4); 11 U.S.C.A. § 403, sub. c; 28 U.S.C. § 41(1), sub. (3); R.S. 720; 11 Am. Jur., Conflict of Laws, § 30?

This same question was not presented in the *U. S. v. Bekins,* 304 U.S. 27, case, and any language in that opinion must be considered in connection with the nature of the questions which were presented. Any general language used in that opinion is not here controlling.

Petitioner finds nothing in that opinion that modifies what this Court said in *Meriwether v. Garrett,* 102 U.S. 472, as follows:

> "The judicial department can not prescribe to the legislative department limitations upon the exercise of its acknowledged powers."

Or in *Heinle v. Board*, 19 Wall. (86 U.S.) 665, as follows:

> "It is not only not one of the inherent powers of the court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

The Supreme Judicial Council of Massachusetts, in the recent case of *Comm. of Corp. and Taxation v. Williston*, 54 N.E. (2d) 43, said:

> "Decision of United States Supreme Court in construing federal statute was entitled to due deference and respect, but was not binding on Supreme Judicial Council in construing Massachusetts taxing statute."

This same basic question was presented in the case of *Lyford v. N. Y.*, 140 F. (2d) 840, which reached this Court as *Bankers Trust Co. v. N. Y.*, Petition No. 127, Oct. 1944 Term; certiorari was denied Oct. 10, 1944.

Just as the State of New York was entitled to a lien for unpaid amounts due under the R.R. Grade Crossing Act, so is the State of California entitled to a lien on any tax delinquent privately held taxable land within the boundaries of respondent, and has delegated to respondent full power and the duty to ad-

minister such land, and to collect the "rents, issues and profits" therefrom for the "uses and purposes of the Act", among which purposes is the fulfillment of contract obligations.

The Second Circuit Court said, in that case:

> "Since the installments remain continuing obligations of this debtor and any successor in title, as they become due, no plan of reorganization can be feasible and hence acceptable which does not arrange for their payment and thus in substantial effect safeguard the ultimate interests of the state."

The California Supreme Court has clearly and unequivocally ruled that the installments of direct ad valorem land-taxes sufficient to fulfill the obligations in the bonds owned by petitioner remain continuing obligations of every private holder of land-title, and must be levied and collected, and their proceeds, or the revenue derived from the usufruct of the land must be applied according to state law.

Provident v. Zumwalt, 12 Cal. (2d) 365;
Moody v. Provident, 12 Cal. (2d) 389;
Anderson-Cottonwood v. Zinzer, 51 Cal. App. (2d) 589 (hearing denied by Cal. Sup. Ct. June 25, 1942).

Also, see:

Fallbrook v. Bradley, 164 U.S. 112;
Tulare v. Shepard, 185 U.S. 1;

Anderson-Cottonwood v. Klukkert, 13 Cal. (2d) 191;
Herring v. Modesto I. D., 95 F. 705;
Glenn-Colusa v. Ohrt, 31 Cal. App. (2d) 619;
Boskowitz v. Thompson, 144 Cal. 724;
In re Madera I. D., 92 Cal. 296;
Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);
Meyerfeld v. So. San Joaquin, 3 Cal. (2d) 409;
Judith Basin I. D. v. Malott; 73 F. (2d) 142;
Willard v. Glenn-Colusa, 201 Cal. 726.

These cases leave no possible doubt that the economic interests that will receive an unprecedented windfall, if the decree of the Court below stand, are the same as would have profited, had the ruling in *Lyford v. N. Y.*, supra, been different. The same basic conflict of interest was the bottom question in *Tuttle v. Bell*, 377 Ill. 510, cert. denied 315 U.S. 815. In that case it was ruled that private holders of land-titles can not get an injunction in a Federal Court to arrest the execution of a State land-tax statute. But, the same rule must govern, whether the action is sought by the holders of taxable land themselves, or by their elected officials seeking exoneration from their mandatory duty in a federal forum.

Respondent, being the *alter ego* of the State, all of whose property and revenues are State owned (*El Camino v. El Camino*, 12 Cal. (2d) 378), is without

any pecuniary interest in the instant proceeding, and by the provisions in 11 U.S.C.A. § 526 et seq., has no judicial standing in a Bankruptcy Court.

In re Western Tool & Mfg. Co., 142 F. (2d) 404.

Differing from usual ad valorem taxes, the taxes lawfully payable to respondent by private holders of land-titles are in no respect taxes on land, nor upon buildings or any planted orchards, or other improvements made by the land holder, but they are levied only upon and in proportion to the assessed valuation of the land subject to tax.

Thus, those holding land with low assessed value pay only a small fraction in taxes, per acre, of the amount payable annually by the holders of the more valuable land.

Such taxes, levied on the value of land, instead of on the land at a flat rate per acre, fall wholly on the private holders of land-titles, as owners, and can not be shifted to a tenant or anybody else, and can not increase living costs. See "Wealth of Nations" by Adam Smith, "Principles of Political Economy" by John Stuart Mill, "Progress and Poverty" by Henry George.

This species of tax is clearly a "direct" tax, and thus within the constitutional command of apportionment, and always before held to be within the exclusive field of the States, and independent and uncontrollable under any clause in the Federal Constitution, when

exercised by the States. See Federalist Essays, Nos. XXXII, XXXIII, Hamilton.

Hale v. State Board, 302 U.S. 95;

Knowlton v. Moore, 178 U.S. 41, 78.

The California Courts have held clearly and unequivocally that the bonds issued under the same statutes as the bonds at bar, are mere tax anticipation and revenue notes, and that after delivery there is no future obligation upon them, either absolute or contingent to pay out anything except the taxes and revenues anticipated, when collected.

Provident v. Zumwalt, supra;

Moody v. Provident, 12 Cal. (2d) 389.

Stat. 1939, Ch. 72, does not purport to take away rights created by former legislation for the security of the bonds, at bar, but merely consents to "proceedings permitted by Sections 81/84" of Federal law.

Therefore, unless Congress may, by simple statute, constitutionally supervise or interfere with the execution of valid State land-taxing statutes, and Sec. 83c is construed to read that such interference is permitted, the so-called State consent is of no effect in this case. "Neither State consent nor submission can enlarge the powers of Congress."

Ashton v. Cameron County, 298 U.S. 513.